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7 United States of America

8 IN THE UNITED STATES DISTRICT COURT  
9  
EASTERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA,

CASE NO. 1:22-CR-00246-ADA

12 Plaintiff,

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER

13 v.

14 EDDIE CORDERO SERNA,

DATE: December 13, 2022

15 Defendants.

TIME: 1:00 p.m.

COURT: Hon. Ana de Alba

16  
17 On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the  
18 Eastern District of California “until further notice.” Further, pursuant to General Order 611, this Court’s  
19 declaration of judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s  
20 Order of April 16, 2020 continuing this Court’s judicial emergency, this Court has allowed district  
21 judges to continue all criminal matters to a date after May 2, 2021.<sup>1</sup> This and previous General Orders,  
22 as well as the declarations of judicial emergency, were entered to address public health concerns related  
23 to COVID-19.

24 Although the General Orders and declarations of emergency address the district-wide health  
25 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision  
26 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record

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28 <sup>1</sup> A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the  
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order  
will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-  
 2 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such  
 3 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153  
 4 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit  
 5 findings on the record “either orally or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 7 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial  
 8 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the  
 9 judge granted such continuance on the basis of his findings that the ends of justice served by taking such  
 10 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.  
 11 § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of  
 12 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of  
 13 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

14 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”  
 15 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address  
 16 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has  
 17 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-  
 18 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d  
 19 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.  
 20 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to  
 21 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).  
 22 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated  
 23 by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following  
 25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
 26 justice exception, § 3161(h)(7) (Local Code T4).<sup>2</sup> If continued, this Court should designate a new date  
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28 <sup>2</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

1 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
2 pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendants, by and  
5 through defendants’ counsel of record, hereby stipulate as follows:

6 1. By previous order, this matter was set for Trial on December 13, 2022.

7 2. By this stipulation, the government and defendant now move to set the matter for jury  
8 trial on April 11, 2023, and to exclude time between November 16, 2022, and April 11, 2023, under  
9 Local Code T4.

10 3. The parties further request that the matter be set for a trial confirmation hearing on March  
11 6, 2023.

12 4. The parties agree and stipulate, and request that the Court find the following:

13 a) The government has represented that the discovery associated with this case  
14 includes reports, photographs, and audio files. All of this discovery has been either produced  
15 directly to counsel and/or made available for inspection and copying.

16 b) Counsel for defendant desires additional time to further review discovery, discuss  
17 potential resolution with his client and the government, and investigate and prepare for trial.

18 c) A plea agreement has been provided to defense counsel.

19 d) Counsel for defendant believes that failure to grant the above-requested  
20 continuance would deny him/her the reasonable time necessary for effective preparation, taking  
21 into account the exercise of due diligence.

22 e) The government does not object.

23 f) Based on the above-stated findings, the ends of justice served by continuing the  
24 case as requested outweigh the interest of the public and the defendants in a trial within the  
25 original date prescribed by the Speedy Trial Act.

26 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
27 et seq., within which trial must commence, the time period of December 13, 2022 to April 11,  
28 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code

1 T4] because it results from a continuance granted by the Court at defendants' request on the basis  
2 of the Court's finding that the ends of justice served by taking such action outweigh the best  
3 interest of the public and the defendants in a speedy trial.

4 5. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
5 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
6 must commence.

7 IT IS SO STIPULATED.

8 Dated: November 16, 2022

PHILLIP A. TALBERT  
United States Attorney

9  
10 /s/ STEPHANIE M. STOKMAN  
11 STEPHANIE M. STOKMAN  
12 Assistant United States Attorney

13 Dated: November 16, 2022

14 /s/ RICHARD BESHWATE  
15 RICHARD BESHWATE  
16 Counsel for Defendant  
17 EDDIE CORDERO SERNA

18 IT IS SO ORDERED.

19 Dated: November 18, 2022

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UNITED STATES DISTRICT JUDGE

